

ILLINOIS POLLUTION CONTROL BOARD  
July 24, 1997

COUNTY OF WILL, )  
 )  
 Complainant, )  
 ) AC 97-41  
 v. ) (WC 96 AC 22)  
 ) (Administrative Citation)  
 UTILITIES UNLIMITED, INC., and )  
 CHARLES PETREKIS, SR. d/b/a )  
 UTILITIES UNLIMITED, INC., )  
 )  
 Respondents. )

DAWN UNDERHILL, ASSISTANT STATE'S ATTORNEY, APPEARED ON BEHALF OF THE COUNTY OF WILL; and

CHARLES PETREKIS, SR. APPEARED *PRO SE*.

INTERIM OPINION AND ORDER OF THE BOARD (by J. Theodore Meyer):

This matter comes before the Board on a petition to review an administrative citation issued by the County of Will (County) under Section 31.1 of the Illinois Environmental Protection Act (Act). 415 ILCS 5/31.1 (1996). The citation was filed against Utilities Unlimited, Inc. and Charles Petrekis, Sr., d/b/a Utilities Unlimited (respondents). The citation alleges that on October 25, 1996, respondents violated Sections 21(p)(1) and 21(p)(3) of the Act by causing or allowing open dumping and open burning at the facility on Leslie Lane in Will County, Illinois. The statutory penalty for these violations is \$500 each, for a total of \$1,000. See 415 ILCS 5/42(b)(4) (1996).

For the reasons stated below, the Board finds that respondents have violated Sections 21(p)(1) and 21(p)(3) of the Act and will assess a penalty of \$1,000. The Board also orders respondents to pay any hearing costs incurred by the County and the Board, pursuant to Section 42(b)(4) of the Act. 415 ILCS 5/42(b)(4) (1996). The Clerk of the Board and the County are ordered to file with the Board a statement of hearing costs, supported by affidavit. After receiving that information, the Board will issue a final order assessing hearing costs and the \$1,000 penalty.

PROCEDURAL HISTORY

The County served respondent Charles Petrekis, Sr., (Petrekis) with the administrative citation by certified mail on November 21, 1996. The administrative citation charges respondents with causing or allowing open burning and open dumping at the site in violation of Sections 21(p)(1) and 21(p)(3) of the Act. Those sections are enforceable under Section 31.1 of the Act, under which respondents have the choice of paying the penalty or contesting the

citation. 415 ILCS 5/31.1 (1996). Petrekis chose the latter, and filed a petition for review with the Board on December 19, 1996. He also filed an Answer to the citation.

At hearing three witnesses testified for the County: David Eichorst (Eichorst), deputy sheriff for Will County; Julie Juntunen (Juntunen), inspector for Will County's Waste Services Division; and Joy Hinz (Hinz), inspector for Will County's Waste Services Division. Charles Petrekis, Sr. and Michael Petrekis testified on behalf of respondents.

### FACTS

Respondent Utilities Unlimited, Inc. owns the site in question which is located on Monee Road in Crete Township, Will County, Illinois. The site is operated as a water and sewage treatment facility for the Calumet Gardens subdivision. Tr. at 51.<sup>1</sup> On October 25, 1996, Juntunen, Hinz and Jo Ann Smyth, Will County Zoning Inspector, inspected the site at the request of the Will County Assistant State's Attorney for Zoning in response to open burning violations cited by the Will County Sheriff's Department. Report at 4.

After arriving at the site at 11:40 a.m. on October 25, 1996, Juntunen observed that the access gate to the site was ajar. Report at 4, Photograph 1. Juntunen reported that a trailer was located at the site. North of the trailer the inspectors observed a pile of debris and clothes dumped in the weeds. Photographs were taken and are included in the report. Report at 4, Photographs 2 and 10. On the west side of the site the inspectors observed construction and demolition materials including soil, rubble, paint cans, metal wiring, shingles, plaster, metal siding and garbage. Report at 4-5, Photographs 4 and 5. In addition Juntunen testified that gas cylinders were found at the site. Tr. at 26, Photograph 7.

Directly northeast of the construction and demolition materials, the inspectors observed litter in an area void of grass. The area appeared to have been used for burning, and Juntunen reported that burning also appears to occur in a 50-gallon drum. Report at 5. At the time of the inspection the drum contained fresh household garbage and charred soda cans. Photograph 9. On the southeast portion of the site the inspectors observed seven 50-gallon drums with black liquid on top of the drums as well as on the ground beneath the drums. Report at 4, Photograph 11.

At hearing respondent Charles Petrekis, Sr. (Petrekis) testified that he is the agent of Utilities Unlimited, Inc. and that "[a]s a designated agent for this utility company, I'm in charge." Tr. at 60-61. Petrekis stated that over the years there have been problems with people dumping on the site. His partner lived in the trailer for two years in an attempt to stop the dumping. After his partner's death, Petrekis' son lived in the trailer to try to control the dumping until a court action determined that no one could live on the site. Tr. at 53. Petrekis also stated that he put up a gate but that someone cut off the locks and knocked it down. In his Answer, Petrekis also stated that he contacted the sheriff's office to report the dumping, but

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<sup>1</sup> The transcript is cited as "Tr. at \_\_," the complaint is cited as "Comp. at \_\_," and the report attached to the complaint is cited as "Report at \_\_".

was told that nothing could be done unless the person was caught dumping. See Answer, and Affidavit attached to Answer.

Petrekis testified that in 1978 the property's zoning changed from industrial to agricultural with a special use permit, which means that he must submit a request to make improvements to the property. Petrekis stated that the county charges \$800 to make such a request. Tr. at 52.

Petrekis also testified that photographs 2, 3, 9, 10, 11, 12, 13, 14, 15, 16, and 17 do not depict his property. Tr. at 56. Petrekis stated that a tremendous amount of garbage is dumped along the road to the site, and that it continues to be a problem because it is a vacated road. Tr. at 68. Petrekis testified that he petitioned the Illinois Commerce Commission (ICC) for additional funds to clean up the site before the County issued its complaint. Tr. at 61. He stated that he hopes to resolve the matter with the ICC soon, but that in the meantime the site is secure and no further dumping is occurring on the site. Tr. at 69.

Regarding the open burning citation, Petrekis testified that he did burn a part of the roof that had blown off the water plant during a heavy wind. Tr. at 56. Petrekis stated that the fire department gave him permission to burn the roof debris, but also stated that the police came to the property and issued a citation for the same fire. Tr. at 58.

## DISCUSSION

### Photographs in Dispute

As a preliminary matter the Board will address the issue raised by Petrekis that photographs 2, 3, 9, 10, 11, 12, 13, 14, 15, 16, and 17 entered as evidence do not depict his property. At hearing Juntunen agreed that photographs 14, 15 and 16 do not depict the site at issue. Tr. at 39. Therefore, the Board will not consider these photographs. As to the remaining photographs, Juntunen testified at hearing that survey stakes were located at the site which marked the northern boundary of the site. Tr. at 35-36. From this information, Juntunen determined that photographs 2, 3, 9, 13 and 17 depict the site at issue. Juntunen admitted that photograph 10 is in dispute; photograph 11 is right on the property line; and photograph 12 is a close-up of the top of a drum and its location cannot be determined. Tr. at 38-39. The Board finds that the administrative citation can proceed without photographs 10, 11 and 12. However, from the record before it, the Board finds that photographs 2, 3, 9, 13 and 17 are pictures of the site at issue and will remain part of this administrative citation proceeding. The Board also notes that several photographs not in dispute adequately support the County's allegations in this matter. See photographs 4,5 and 9.

### Regulatory Framework

The Act establishes that in order to seek enforcement by way of the administrative citation process for violations of Section 21(p), the Agency, or local governing body, must establish that the person caused or allowed open dumping and must also prove that the open dumping resulted in litter, open burning, or other specified conduct at the dump site. 415 ILCS 5/31.1(d)(2)

(1996). If the record demonstrates that such violation occurred then the Board must adopt an order finding a violation and impose the specified penalty of \$500 for each penalty. The only mitigation of a violation is if "the person appealing the citation has shown that the violation resulted from uncontrollable circumstances," in which case the Board shall adopt an order which imposes no penalty.

The administration citation charges respondents with causing or allowing open dumping and open burning at the site in violation of Section 21(p)(1) and 21(p)(3) of the Act. That section provides:

No person shall:

\* \* \*

(p) in violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:

1. litter

\* \* \*

3. open burning.

415 ILCS 5/21(p)(1) and 21(p)(3) (1996). Subsection (a) of Section 21 provides:

No person shall:

(a) cause or allow the open dumping of any waste.

415 ILCS 5/21(a) (1996).

“Open dumping” means “the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.” 415 ILCS 5/3.24 (1996). “Refuse” means “waste and “waste” includes “any garbage . . . or other discarded material.” 415 ILCS 5/3.32 and 3.53 (1996). In St. Clair County v. Louis Mund (August 22, 1992), AC 90-64, 125 PCB 381, the Board adopted the definition of "litter" contained in the Litter Control Act:

"[L]itter" means any discarded, used or unconsumed substance or waste. "Litter" may include, but is not limited to, any garbage, trash, refuse, debris, rubbish, grass clippings or other lawn or garden waste, newspaper, magazines, glass, metal, plastic or paper containers, or other packaging construction material, abandoned vehicle...or anything else of an unsightly or unsanitary nature which has been discarded, abandoned or otherwise disposed of improperly.

“Open burning” is “the combustion of any matter in the open or in an open dump”. 415 ILCS 5/3.23 (1996).

Section 21(p)(1) and 21(p)(3) violations

The Board will first address the open dumping citation, followed by the open burning citation.

Section 21(p)(3) requires the County to demonstrate that respondents caused or allowed open dumping. The investigator’s report and testimony show that miscellaneous scrap, household garbage, construction and demolition materials were scattered throughout the site. These materials constitute “waste.” Petrekis states that people have been dumping on and around the site, that he has tried to prevent such dumping, but that it continues despite his efforts. Petrekis states that he has called the police, but that they cannot do anything unless the dumpers are “caught in the act.”

That others dumped some of the waste at the site is no defense; the Illinois Supreme Court has determined that one may “cause or allow” a violation of the Act without knowledge or intent. People v. Fiorini, 143 Ill. 2d 318, 574 N.E.2d 612 (1991). The Board has held that “[t]he owner of the property that creates the pollution has a duty, imposed by the legislation, to take all prudent measures to prevent the pollution.” IEPA v. Gordon (February 7, 1991), AC 89-156, 118 PCB 309, 312. While knowledge or intent need not be shown, liability requires a showing that respondent “exercised sufficient control over the source of pollution.” Fiorini, 143 Ill.2d at 346, 574 N.E.2d at 623. In addition the Board has held that present inaction on the part of the landowner to remedy the disposal of waste previously placed on the site constitutes “allowing” litter in that the owner allows the illegal situation to continue. IEPA v. M.K. O’Hara Construction, Inc., Kenneth O’Hara and Madalyn O’Hara (April 6, 1995) AC 94-96/94-97. In this case, Petrekis admitted that “[a]s a designated agent for this utility company, I’m in charge.” Tr. at 60-61. As such Petrekis was the operator of the site and had the ability to control the site.

Petrekis stated that he attempted to prevent the dumping by having someone live on and guard the site and by putting up a fence, but that the County has prohibited anyone from living on the property, and the fence he built on the site was knocked down. Tr. at 52-53. Petrekis also stated that, at a cost of \$800, he will need to seek the permission of the County to make any improvements to the property such as erecting another fence. While the Board acknowledges the testimony that the area along Monee Road, including the site at issue, seems to be a general dumping ground, and that Petrekis made several attempts to prevent dumping on the site, we find that Petrekis has been well aware of the problem, but has not been diligent enough in his efforts to control the dumping on the site. The fact that, since 1978, he has been required to seek county approval at a cost of \$800 to erect a new fence is not sufficient reason to allow continued dumping at the site. Therefore the Board finds that respondent caused or allowed open dumping at the site in violation of Section 21(p)(3) of the Act.

Regarding the open burning citation, Petrekis admitted that he ordered a fire to be set at the site to burn part of a roof that had fallen during a storm. He claims that the fire department gave him permission to do so, but did not provide the Board with evidence of this permission, such as an affidavit from the fire department. Petrekis admitted that the police came to the site and issued a citation for the same fire. In addition, photograph 9 depicts fresh household garbage and charred soda cans in a drum which indicates that more than one fire was set at the site. Petrekis provided no explanation for the charred soda cans. Therefore, the Board finds that Petrekis caused or allowed open burning at the site.

In an administrative citation, the Board also must determine that the violation did not result from uncontrollable circumstances. 415 ILCS 5/31.1 (1996). The conditions under which the dumping and fires occurred are Petrekis' responsibility and the Board cannot find that the open dumping or the open burning resulted from factors beyond his control.

#### Penalty and Costs

Section 42(b)(4) of the Act provides for penalties in an administrative citation action as follows:

In an administrative citation action under Section 31.1 of this Act, any person found to have violated any provision of subsection (o) or (p) of Section 21 of this Act shall pay a civil penalty of \$500 for each violation of each such provision, plus any hearing costs incurred by the Board and the Agency. Such penalties shall be made payable to the Environmental Protection Trust Fund, to be used in accordance with the provisions of the Environmental Protection Trust Fund Act except that if a unit of local government issued the administrative citation, 50% of the civil penalty shall be payable to the unit of local government.

415 ILCS 5/42(b)(4) (1996).

The Board will assess a civil penalty of \$500 for each violation as found, totaling \$1,000. Further, pursuant to Section 42(b)(4) of the Act, the Board and the County are entitled to their hearing costs. Those costs are not contained in the record at this time. Therefore, as part of this interim order, the Clerks of the Board and County are ordered to each file a statement of costs, supported by affidavit, with the Board and with service upon respondents.

This interim opinion constitutes the Board's interim findings of fact and conclusions of law in this matter. A final order will be issued pursuant to the interim order which follows.

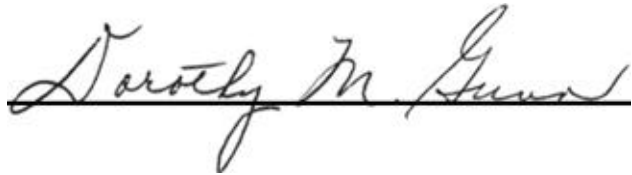
#### INTERIM ORDER

1. Respondents, Utilities Unlimited, Inc. and Charles Petrekis, Sr., are hereby found to have violated 415 ILCS 5/21(p)(1) and (p)(3)(1994) on October 25, 1996.

2. The County of Will is hereby directed to file a statement of its hearing costs, supported by affidavit, with the Board and with service on respondents within 14 days of service of this order. Within the same 14 days, the Clerk of the Pollution Control Board shall file a statement of the Board's costs, supported by affidavit, and with service upon respondents.
3. Respondents, Utilities Unlimited, Inc. and Charles Petrekis, Sr., are hereby given leave to file a reply to the filings ordered in paragraph 2 within 14 days of receipt of that information, but in no case later than 40 days after the date of this order.
4. After the deadline for filing such information and reply thereto has expired, the Board will issue a final order assessing the statutory penalty of \$1,000 and awarding appropriate costs.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above interim opinion and order was adopted on the 24th day of July 1997, by a vote of 4-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board